

## **Mitigation Planning and the Implications of November 1, 2004 “Deadline”**

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As time passes, people are starting to ask questions about what will happen on November 1, 2004 . . . that magic date when certain consequences and limitations related to state and local mitigation planning go into effect. So, what will really happen?

There are two parts to the answer. The first part is what happens if a community does not have a mitigation plan in place; the second part is related to consequences if a state does not have an approved mitigation plan. Communities need to be aware of both.

In October 2002, FEMA issued an interim final rule regarding dates and related requirements for local mitigation plans. A subsequent rule, issued in October 2003, modified one of those dates. The current effective regulations are found at 44 CFR Parts 201 and 206 (be sure to use the most current version).

### **What happens if a community does not have a mitigation plan on November 1, 2004?**

The November 1, 2004 deadline is not a “drop-dead” deadline. When that date has come and gone, it won’t mean the end of planning. Planning won’t come to a screeching halt – and the opportunity to seek mitigation funds will not be lost forever. Communities can and should continue to develop and adopt plans after that date, and funds to support that planning will continue to be made available by FEMA.

But November 1, 2004 is a very important date to keep in mind because there are certain consequences and limitations that will go into effect on that date:

**For the post-disaster Hazard Mitigation Grant Program (HMGP):** After November 1, 2004, HMGP will only be available in states that have approved mitigation plans (see next section). As set forth in current federal regulations (below), there are two consequences or limitations if a community does not have an approved local mitigation plan and the community is included in a declaration of a major disaster. The limitations are distinguished by whether a community may apply for, or may receive grant funds:

1. For disasters declared before November 1, 2004, a community without a plan can apply for and receive an HMGP project grants, but must commit to developing the plan while implementing the project.
2. For disasters declared after November 1, 2004, a community without a plan cannot apply for HMGP project grants. It may, however, apply for planning grants under the 7% of HMGP funds available for planning.

**For the Pre-Disaster Mitigation program (PDM):** The November 1, 2004 deadline does not affect PDM funding. From now on (i.e., for notices of funds availability issued after November 1, 2003), a community without an approved plan may apply for PDM funding for plan development – but communities must have an approved plan in order to receive a PDM project grant.

### **What happens if a state does not have a mitigation plan on November 1, 2004?**

These consequences are much more significant – and communities would do well to check on the status of their state’s plans. As of late January, FEMA reported that no state plans have been approved under this requirement.

So, what is at risk if a FEMA-approved state mitigation plan is not in place by November 1, 2004? Plenty. The federal regulation at Sec. 201.1 states that:

“By November 1, 2004, States must have an approved Standard State Mitigation plan meeting the requirements of this section in order to receive assistance under the Stafford Act . . . In any case, emergency assistance provided under *[several Stafford Act sections cited]* will not be affected.”

The distinction, then, is whether disaster assistance is “emergency” in nature. If a state does not have an approved plan in place, only emergency assistance will be provided. The Public Assistance categories that are considered emergency include only Category A (debris removal) and Category B (protective measures). The remaining categories of work are considered permanent restorative work and will not be provided. This means federal assistance will not be available for Category C (roads and bridges), Category D (water control facilities), Category E (public buildings), Category F (public utilities), and Category G (other facilities).

But the consequences don’t stop there. Three more streams of federal disaster assistance will not be available unless a state has an approved plan: Individual and Family Grants (IFG); Hazard Mitigation Grant Program funds (HMGP); and Fire Suppression Assistance.

It is clear that Congress, as expressed in the passage of the Disaster Mitigation Act of 2000, expects states and communities to get serious about reducing the long-term impacts of disasters. How serious? Well, consider what the loss of disaster assistance would mean to your state and community if the state’s plan is not in place. Between 1989 and 1998 (the only period for which ASFPM has data), FEMA’s disaster assistance provided:

- \$5.42 billion for Individual Assistance;
- \$7.96 billion for Public Assistance (permanent restorative works); and
- \$1.47 billion for the Hazard Mitigation Grant Program.

## Excerpts from Federal Regulations

### 44 CFR Part 201 – MITIGATION PLANNING

#### §201.1 Standard State Plans.

(a) *Plan requirements.* By November 1, 2004, States must have an approved Standard State Mitigation Plan meeting the requirements of this section in order to receive assistance under the Stafford Act, although assistance authorized under disasters declared prior to November 1, 2004 will continue to be made available. Until that date, existing, FEMA approved State Mitigation Plans will be accepted. In any case, emergency assistance provided under 42 U.S. C 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5185, 5192 will not be affected. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing and effects of natural hazards. States may choose to include the requirements of the HMGP Administrative Plan in their mitigation plan, but must comply with the updates, amendments or revisions requirements listed under 44 CFR 206.437.

#### §201.6 Local Mitigation Plans.

(a) *Plan requirements.*

(1) For disasters declared after November 1, 2004, a local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of the mitigation project grant.

(2) Local governments must have a mitigation plan approved pursuant to this section in order to receive a project grant through the Pre-Disaster Mitigation (PDM) program under any Notice of Funding Opportunity issued after November 1, 2003. The PDM program is authorized under §203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133. PDM planning grants will continue to be made available to local governments after this time to enable them to meet the requirements of this section.

### 44 CFR Part 206 – FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

#### §206.434 Eligibility. *[for HMGP project grants]*

(b) \* \* \*

(1) For all disasters declared on or after November 1, 2004, local and tribal government applicants for subgrants must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of subgrants.